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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-203399

DATE: June 5, 1981

MATTER OF: DeVille Aluminum Products, Inc. 66

DIGEST:

Protest filed after bid opening asserting that rejection of low bid which offers product deviating from specification was improper because specification is restrictive is untimely, since protest against improprieties in solicitation apparent prior to bid opening must be filed before bid opening time.

DeVille Aluminum Products, Inc. protests the rejection of its bid as nonresponsive under invitation for bids F09609-81-B-0004 issued by Dobbins Air Force Base, Georgia. The procurement was for window replacement.

As its basis for protest DeVille complains that it was entitled to award as the low bidder; that the specification is proprietary, i.e., that it is based on a window produced by a particular manufacturer only; that as a consequence it offered an alternate product which meets or exceeds the specified one. The gravamen of the protest therefore is the restrictive nature of the specification, since it is clear from DeVille's initial submission that its bid deviated from the solicitation requirements and therefore was nonresponsive.

Protests based on alleged improprieties in a solicitation which are apparent prior to the time of bid opening must be filed prior to bid opening if they are to be considered. 4 C.F.R. § 20.2(b)(1) (1980). Since the alleged restrictive nature of the window specification was apparent prior to bid opening, the protest is untimely and not for consideration on the merits. Vallie Enterprises, B-200339, May 29, 1981, 81-1 CPD

The protest is dismissed.

Protest of ...
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Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel